

Laws of Her Majesty's Province of Newfoundland, passed in the year 1843.

6 Victoria – Chapter 3

An Act to regulate the Trials of Controverted Elections or Returns of Members to serve in the House of Assembly. (Passed 15th March, 1843.)

Whereas it is expedient to provide for the speedy and efficient investigation of Election Petitions:

I. Be it therefore enacted, by the Governor and Assembly, in General Assembly convened, that whenever any Petition, complaining of the undue Return of any Member to serve in the General Assembly of Newfoundland, or complaining that no Return has been made to any Writ issued for the Return of any Member or Members, or complaining of any matter contained in or connected with such Return, shall be presented to the Assembly within the time hereinafter limited for such purpose, a day and hour shall be appointed by the said Assembly for taking the same into consideration, and notice, in writing, thereof shall be forthwith given by the Speaker to the Petitioners or their Agent, and to the sitting Member, or to any parties who may be permitted to defend his seat; or in case there has been no Return, to the party complained against, requiring their attendance by themselves, their Counsel, or Agent, at the Bar of the House, at the time appointed; and if the said Petitioners, their Counsel, or Agent, shall not appear within One Hour of the time fixed for calling in the respective parties for the purpose of proceeding to the nomination of a Select Committee, as is hereinafter prescribed, the order for such appointment as aforesaid shall be discharged, and such Petition shall not be any further proceeded upon, unless the House, upon sufficient cause shewn, shall order otherwise.

II. And be it further enacted, That in cases where an Election shall have been holden during the Recess of the Legislature, or within Thirty Days of the expiration of a Session, no Petition complaining of such Election shall be received after Thirty Days from the first Day of the Session of the General Assembly which shall be holden next after such Election; and in cases where an Election shall have been holden during a Session, and not within Thirty Days of the close of the same, no Petition touching such Election shall be received after the lapse of Thirty Days from such Election.

III. And be it further enacted, That before any Election Petition shall be presented to the House, the Person or Persons subscribing the same, or some one or more of them, shall personally enter into a Recognizance to our Sovereign Lady the Queen, according to the form given in the Schedule [A] hereunto annexed, for the Sum of Two Hundred Pounds, with one, two, three or four sufficient Sureties, either in the same Recognizance, or in separate Recognizances, for the additional Sum of Two Hundred Pounds in a Sum or Sums of not less than Fifty Pounds each, for the payment of all Costs and Expenses which any Committee of the House selected to try such Petition in the manner hereinafter provided, shall adjudge to be payable by the Person or Persons subscribing the said Petition, and also for the payment of all costs and expenses which, in case such Person or Persons shall fail to appear before the said Assembly at such time or times as shall be fixed as aforesaid for choosing a Committee to try such Petition, or in case such Petition be withdrawn as hereinafter allowed, shall become due from the Person or Persons subscribing such Petition, to any Witness summoned in his or their behalf, or to any party who shall appear in opposition to such Petition.

IV. And be it further enacted, That the Sitting Member, or party petitioned against, shall enter into the like Recognizances with the parties petitioning, except in so far as the said Recognizance is conditioned for the payment of Costs on the withdrawal of the said Petition; and unless such Recognizance shall be entered into within the time aforesaid, it shall be lawful to and for the parties petitioning to proceed, in all matters hereinafter prescribed with reference to hearing, trying and determining the merits of the same, ex parte.

V. And be it further enacted, That every Person who shall enter into any such Recognizance, as Surety for any other Person, shall testify upon oath, in writing, to be sworn at the time of entering into such Recognizance, and before the same Person by whom his Recognizance shall be taken, that he is seized or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he shall be bound by his said Recognizance,—and every such Affidavit shall be annexed to the Recognizance; and that in every such Recognizance shall be mentioned the name and usual place of residence of the Persons proposed to become Sureties as aforesaid, with such other description of the proposed Sureties as may be sufficient to identify them easily.

VI. And be it further enacted, That every Recognizance hereinbefore required shall be entered into, and every affidavit hereinbefore required shall be sworn, before one of Her Majesty's Justices of the Peace,—and every Justice of the Peace is hereby required to take the same; and every such Recognizance and affidavit which shall be taken as aforesaid, being duly certified under the hand of the Justice before whom they shall have been taken, shall be delivered to the Speaker of the Assembly, for the purposes of this Act.

VII. And be it further enacted, That at the time appointed for taking the said Petition into consideration, the Petitioner, or Petitioners, their Counsel or Agents, and the Counsel or Agents of the Sitting Member, or the party Petitioned against if not a Sitting Member, his Counsel or Agent, shall be ordered to attend at the bar of the House, and thereon, the Sitting Member, or if the party complained against be not the Sitting Member, then some Member of the House on his behalf and at his request, shall name one Member of the House,—the parties petitioning, by some Member on their behalf, and at their request, shall name a second Member,—and so on, until each party shall have named three Members; and such six Members, of whom four shall be a Quorum, shall form a Select Committee to try the matter of the Petition to be referred to them: Provided always, that no Member who shall be under any pecuniary liability touching such Petition or the defence thereof, shall form one of the said Committee upon such Petition. And in all cases in which the proceedings shall be carried on ex parte, the Speaker shall put into a box the names of all the Members then in town, except those of the Sitting Member and of the Three Members named by the Petitioner, and shall therefrom draw out the names of Three Members, who shall, together with the Three chosen by the party petitioning, form the Committee, provided that if any of the Three so drawn shall be interested as above mentioned, another or others shall be drawn in his or their stead.

VIII. And be it further enacted, That the Members of the said Committee shall, before entering upon the duties of their Office, be sworn, at the table, "well and truly to try the merits of the petition to be referred to them, and a true report to give according to the evidence"; And the said Committee shall

meet, at a certain time to be fixed by the House, and shall sit every day (Sunday, Christmas-day, and Good Friday, excepted,) and shall not adjourn for a longer period than Twenty-Four Hours, without leave obtained from the House, upon special cause to be assigned for such longer adjournment.

IX. And be it further enacted, That the said Select Committee shall, on their first meeting, from among the Members composing the same, elect a Chairman by ballot, and such Chairman shall have the same and no other power of voting and speaking in the said Committee as any other Member thereof, and such Committee shall have power to appoint a Clerk, who shall take and keep full and correct minutes of all the evidence which shall be taken before the said Committee.

X. And be it further enacted, That the said Select Committee shall have power to send for Persons, Papers, and Records, and shall examine on oath all Witnesses who may be brought before them, and shall try the merits of the said Return or Election, or both, and shall determine, by a majority of voices of the said Committee, respecting the matters contained in the Petition to them referred; and whether the Petitioner or Petitioners, or the Sitting Member or Members, or either of them, be duly returned or elected, or whether the Election be void; and, subject to the provisions hereinafter contained in case of the Petition or Defence being reported frivolous or vexatious, or of no person appearing before the Committee to defend the same, shall have full power to award and direct if any and what costs and expenses shall be paid by any and which of the parties, to the other or others of them, and the costs and expenses which shall be due and payable by any Petitioner or party to any Witness summoned to attend before any Committee under the provisions of this Act, and shall report such determination, award and direction, to the House, together with the Evidence taken before the said Committee, and whether the petition or the opposition thereto, was or was not frivolous and vexatious; which determination, award, direction and report, shall be final between the parties, to all intents and purposes; and the House, on being informed thereof by the Chairman of the said Committee, shall order the same to be entered on their Journals, and shall give the necessary directions for altering or confirming the said Return, or for ordering a Return to be made, or a Writ to be issued for a new Election, or carrying the said award, determination, direction or report, into execution, as the case may require.

XI. And be it further enacted, That in case the said Committee shall be unable to agree upon any point that may be brought under their consideration, the said Committee shall report such point to the House, together with the evidence taken thereupon, and the House shall decide upon the point so submitted to them, had direct the Committee accordingly,—whereupon the said Committee shall proceed with their investigation; and in case the said Committee shall disagree as to their final report, they shall submit to the House the grounds of their disagreement, whereupon the House, after due consideration thereof, and of the whole evidence, shall make such order as to right shall appertain, and such order shall be carried into effect as if it were based upon the report of the said Select Committee.

XII. And be it further enacted, That in case it shall appear to the said Committee, that any party who shall have been the only Candidate at any Election, and shall prove to the satisfaction of the said Committee that he was duly qualified to be a Member of the General Assembly, and had legally tendered himself to be put in nomination, but was unlawfully refused by the Returning Officer to be allowed so to be put in nomination, the said Committee may, if they think fit, report that such

Candidate ought to have been returned, and direct that the said Candidate shall be the Sitting Member for the District for which the said Election was holden.

XIII. And be it further enacted, That no Member of the said Select Committee shall be allowed to absent himself from the same without the leave of the House, and that the Chairman of the said Committee shall always report the name of every Member thereof who shall so absent himself without such leave, as aforesaid: every Member whose absence, without leave, shall be so reported, shall be directed to attend the House at its next sitting, and shall then be ordered to be taken into the custody of the Serjeant-at-Arms attending the House, for such neglect of his duty, and shall be otherwise censured, at the discretion of the House, unless it shall appear to the House, by facts specially stated and verified upon Oath, that such Member was by a sudden accident, or by necessity, prevented from attending the said Select Committee.

XIV. And be it further enacted, That in case the Members of the said Committee shall, by death or otherwise, be unavoidably reduced to fewer than the original number thereof, on report of such death or vacancy, by the said Committee, to the House, it shall and may be lawful for the party by whom the Member so dead or absent, as aforesaid, was originally nominated, to nominate and appoint some other Member, not disqualified, as aforesaid, to serve on the said Committee, and the said Committee shall thereon proceed with the trial of the matter to them referred, in like manner as if the Member so appointed had been originally nominated to the said Committee.

XV. And be it further enacted,—That if any person summoned by the said Committee, having been tendered his reasonable expenses, shall disobey such summons, or if any person shall obstruct the attendance of any person so summoned, or if any Witness before the said Committee shall prevaricate, or otherwise misbehave, in giving or refusing to give evidence, the Chairman of the said Committee, by their direction, may at any time during the course of their proceedings report the same to the House, for the interposition of their authority or censure, as the case may require, and the House shall have the same power to punish any such person or Witness, as any Court of Record possesses in like cases.

XVI. And be it further enacted, That whenever the said Committee shall think it necessary to deliberate among themselves upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of any Petition referred to them, as aforesaid, as soon as the said Committee shall have heard the evidence and the arguments relative thereunto, the room or place of meeting shall be cleared, if they shall think proper, while the Members of the said Committee consider thereof; and all such questions, as well as such determination, and all other resolutions, shall be by a majority of voices.

XVII. And be it further enacted, That the Oaths directed by this Act to be taken in the House shall be administered by the Clerk, and that the Oaths by this Act directed to be taken before the said Committee, shall be administered by the Chairman thereof: and every person who shall wilfully give any false evidence before any Committee under the provisions of this Act, or who shall wilfully swear falsely in any affidavit authorized by this Act to be taken, shall, on conviction thereof, be liable to the penalties of wilful and corrupt perjury.

XVIII. And be it further enacted, That whenever it shall happen that the General Assembly shall be prorogued after the presentation of any such Petition, as aforesaid, but before the day appointed for taking the same into consideration, it shall and may be lawful for the said Assembly, at the next Session thereof, to appoint another day for taking the said Petition into consideration, and thereon such proceedings shall be had as though the said Petition had been first presented during such Session; and if the said Assembly shall be prorogued after the appointment of a Select Committee for the trial of any such Petition, as aforesaid, and before they shall have reported to the House their determination thereon, such Committee shall not be dissolved by such prorogation, but shall be thereby adjourned to Twelve of the Clock on the day immediately following that on which the said Assembly shall again meet for the despatch of Business (Sunday, Good Friday, and Christmas Day, always excepted); and all former proceedings of such Committee shall remain and continue to be of the same force and effect as if the said Assembly had not been so prorogued; and such Committee shall meet on the day and hour to which it shall have been so adjourned, and shall thenceforward continue to sit from day to day, in the manner hereinbefore provided, until they shall have reported to the House their determination on the merits of such Petition.

XIX. And be it further enacted, That it shall and may be lawful for any person or persons entitled to any costs or expenses by virtue of any of the provisions of this Act, or for his, her, or their Executors or Administrators, to demand the whole amount thereof, as certified by the Chairman of the said Committee, from any one or more of the persons liable for payment thereof, and in case of non-payment thereof to recover the same by Action of Debt in Her Majesty's Supreme or Circuit Courts of this Island; in which Action it shall be sufficient for the Plaintiff or Plaintiff's to declare, that the Defendant or Defendants is or are indebted to him or them in the sum certified as aforesaid; and the said Plaintiff or Plaintiff's shall, upon filing the said Declaration, together with the Certificate of the Chairman of the said Committee, and an Affidavit of a demand having been made on the said Defendant or Defendants for the amount of the said costs, and that such demand has not been satisfied, be at liberty to sign Judgment as for want of a Plea by Nil Dicit, and take out execution for the sum mentioned in the said Certificate, together with the costs of the said Action, in due course of law: Provided always, that the validity of such Certificate, the hand-writing of the said Chairman thereunto being duly verified, shall not be called in question in any Court upon the allegation of any matter or thing anterior to the date thereof: Provided always, nevertheless, that no person or persons who shall have entered into any such Recognizance, as aforesaid, shall be liable for any greater amount of costs or expenses than the amount for which he or they shall, by such Recognizance, have become bound respectively: Provided also, that no Action shall be brought to recover any costs or expenses in pursuance of this Act, unless the same shall have been taxed within Three Months from the time of such Committee giving in their Report, nor after One Year from the taxation thereof.

XX. And be it further enacted, That in every case it shall be lawful for any person or persons from whom the amount of such costs and expenses shall have been so recovered, to recover in like manner from the other persons, or any of them, it such there be, who are liable for the payment of the same costs and expenses, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

XXI. And be it further enacted, That if any Petitioner or Petitioners, or Person or Persons opposing such Petition, who shall have entered into such Recognizance, as aforesaid, shall neglect or refuse, for the space of seven days after demand, to pay to any Witness who shall have been summoned on his or their behalf, before any such Committee, as aforesaid, the sums so certified by the Chairman thereof, to be due to such Witness,—or if such Petitioner, or Petitioners, or Person or Persons opposing such Petition, shall neglect or refuse, for the space of Six Months after demand, to pay to any party who shall appear in opposition to the said Petition, the sum so certified by the Chairman, as aforesaid, to be due to such party, for their costs or expenses, and that such neglect or refusal shall, within One Year after the granting such Certificate, be proved to the Speakers satisfaction, by Affidavit sworn before a Commissioner of Affidavits for the Supreme Court,—in every such case such Person or Persons shall be held to have made default in his or their said Recognizance; and the Speaker shall thereupon certify such Recognizance into the said Supreme Court, and that such Person or Persons have made default therein,— and such Certificate shall be conclusive evidence of such default; and the Recognizance, being so certified, shall have the same effect as if the same were estreated in a Court of Law: Provided always, that such Recognizance and Certificate shall in every such case be delivered by the Clerk of the Assembly, into the hands of one of the Judges of the said Court, or into the hands of such person as they shall appoint to receive the same.

XXII. And be it further enacted, That if any Returning Officer shall wilfully misconduct himself as such Returning Officer, or shall neglect, delay, or refuse, duly to return any Person who ought to be returned to serve in the said Assembly for any District, such Person may, in case it shall have been determined by a Select Committee appointed in the manner hereinbefore directed, that such Person was entitled to have been returned, sue the said Returning Officer having so wilfully misconducted himself, refused, neglected or delayed, duly to make such Return, at his Election, in any of Her Majesty's Superior Courts of Record in this Island, and shall recover double the damages he shall sustain by reason thereof, together with full costs of suit, and every Returning Officer shall be entitled to double costs against every party who shall not succeed in such suit: Provided, such Action is commenced within One Year after the commission of the act on which it is grounded, or within Six Months after the conclusion of any proceedings in the said Assembly relative to such Election.

XXIII. And be it further enacted, That it shall be competent to the Petitioner or Petitioners, at any time after the presentation of the Petition, to withdraw the same, upon giving notice in writing, under his hand or their hands, or under the hand of his or their Agent, to the Speaker, and also to the Sitting Member or his Agent, that it is not intended to proceed with the Petition; and in such case the Petitioner or Petitioners shall be liable to the payment of such costs and expenses as may have been incurred by the Sitting Member, to be taxed by the Committee as hereinbefore provided; or if such withdrawal shall be before the Petition shall have been referred to the Committee, then by the Clerk of the House.

XXIV. And be it further enacted, That in all cases of Controverted Elections, or Returns of Members to serve in the House of Assembly, all the Parties complaining of, or defending such Elections or Returns, shall, by themselves or their Agents, deliver in to the Clerk of the House, Lists of the Voters intended to be objected to, and of the objections intended to be insisted on, not later than Six of the Clock in the afternoon on the Sixth Day next before the day appointed for choosing the Committee to try the

Petition complaining of such Election or Return; and the said Clerk shall keep the Lists so delivered to him, in his Office, open to the inspection of all parties concerned.

XXV. And be it further enacted, That no Evidence shall be given before the Select Committee against the validity of any Vote not included in one of the Lists delivered to the Clerk of the House, as aforesaid, nor upon any head of objection not included in such Lists of objections.

XXVI. And be it further enacted, That whenever any Committee appointed to consider the merits of any Petition complaining of an undue Election or Return, or of the omission to Return any Member or Members to the Assembly, shall report to the House, with respect to any such Petition, that the same appeared to them frivolous or vexatious, the party or parties, if any, who shall have appeared before the Committee in opposition to such Petition, shall be entitled to recover from the person or persons, or any of them, who shall have signed such Petition, the full costs and expenses which such party or parties shall have incurred in opposing the same,—such costs and expenses to be ascertained by the Committee in manner hereinbefore directed.

XXVII. And be it further enacted, That whenever such Committee shall report to the House, with respect to the opposition made to such Petition by any party or parties who shall have appeared before them, that such opposition appeared to be frivolous or vexatious, the person or persons who shall have signed such Petition shall be entitled to recover from such party or parties, or any of them, with respect to whom such report shall be made, the full costs and expenses which such Petitioner or Petitioners shall respectively have incurred in prosecuting their Petition,—such costs and expenses to be ascertained by the Committee in the manner hereinbefore directed.

XXVIII. And be it further enacted, That whenever no party shall have appeared before any such Committee in opposition to such Petition, and such Committee shall report to the House with respect to the Election or Return, or to the alleged omission of a Return, or to the alleged insufficiency of a Return complained of in any such Petition, that the same appeared to them to be vexatious or corrupt, the person or persons who shall have signed such Petition shall be entitled to recover from the Sitting Member defending such Election, (if any) or from any other person or persons whom the House shall have admitted or directed to be made a party or parties to oppose such Petition, the full costs and expenses which such Petitioner or Petitioners shall have incurred in prosecuting their Petition,—such costs and expenses to be ascertained by the Committee in the manner hereinbefore directed.

XXIX. And be it further enacted, That each Member of such Election Committee shall be entitled to receive One Guinea for every day he shall actually sit upon such Committee, to the extent of Twelve Days, and no more,—to be paid by the Treasurer of the Colony, under Warrant from the Governor, or Person administering the government for the time being.

XXX. And be it further enacted, That the Petitions complaining of undue Elections, now lying on the Table of the House of Assembly, shall be tried under the provisions of this Act: Provided, that the Recognizances hereinbefore required to be entered into, be entered into within Six Days from and after the passing of this Act.

XXXI. And be it further enacted, That this Act shall continue and be in force for the period of One Year from the passing thereof, and from thence until the end of the then next Session of the Legislature of this Colony.

SCHEDULE A.

Be it remembered, that on the _____ day of _____ A. D. ____ before me, A B, one of Her Majesty's Justices of the Peace for the District of _____ came C D, E F, G H, and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the following sums, that is to say, the said C D the sum of £200, the said E F the sum of _____, and the said G H the sum of _____, to be levied on their respective Goods and Chattels, Lands and Tenements, to the use of our said Sovereign Lady the Queen, her Heirs and Successors.

The condition of this Recognizance is such, that if the said C D shall well and truly pay all costs and expenses which any Committee of the General Assembly selected to try the matter of the Petition signed by the said C D, complaining that (as the case may be) shall adjudge to be payable by the said C D, and shall also well and truly pay the costs and expenses due and payable by the said C D to any Witness summoned in his behalf, or to the party who shall appear in opposition to such Petition, in case the said C D shall fail to appear before the said Assembly, at such time or times as shall be fixed for choosing a Committee to try such Petition, and shall duly perform and obey whatever order the said Committee shall make touching or concerning the said C D, (or in case the said C D shall be allowed to withdraw his said Petition) then this Recognizance to be void, otherwise to be of full force and effect.